

BEFORE THE INDIANACASE REVIEW PANEL

In The Matter of J.H.)	
Petitioner)	
)	
and)	CAUSE NO. 111118-83
)	
The Indiana High School Athletic Assoc. (IHSAA))	
Respondent)	
)	
Review Conducted Pursuant to)	
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner, J.H., was a sophomore at Charles A. Tindley Accelerated School (Tindley) until October 2011 when he withdrew from Tindley and enrolled at Greenwood High School (Greenwood). On October 3, 2011, the Petitioner and his parents submitted an IHSAA Transfer Report (Transfer Report) with the Indiana High School Athletic Association (IHSAA) and requested an athletic eligibility determination for the 2011-2012 school year.

On October 3, 2011, Tindley completed its portion of the Transfer Report recommending that Petitioner receive limited eligibility until the first anniversary of the date he last participated in athletics which was March 1, 2011. On October 4, 2011, Greenwood, the receiving school, completed its portion of the Transfer Report recommending Petitioner to receive full eligibility under rule 17-8.5 and signed the rule 17-8.5 verification citing the reasons for the transfer provided in Petitioner's Transfer Report which states that the Petitioner's mother lost her job, the main provider for Petitioner's family, and therefore, a financial hardship existed.

On October 4, 2011, the Assistant Commissioner of the IHSAA determined that Petitioner's transfer fell under Rule 19-6.2, a transfer without a change of residence by Petitioner's parents, and therefore, Petitioner would have limited eligibility at Greenwood until March 1, 2012.

On October 4, 2011, Petitioner sought review by the IHSAA Review Committee ("Review Committee") of the Commissioner's determination of ineligibility. The Review Committee conducted its hearing on or about November 4, 2011, and issued its decision

November 15, 2011. The decision upheld the Commissioner's determination of limited eligibility until March 1, 2012.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel¹ on November 17, 2011. On or about November 28, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee decision during a Panel meeting. The Panel requested and received the record from the IHSAA which was copied and provided to each participating member of the CRP. On December 14, 2011, the CRP held a meeting where a quorum of members was present.² In consideration of the record, the following Findings of Fact and Conclusions of Law were determined:

FINDINGS OF FACT

1. Petitioner attended Tindley until October, 2011 when he enrolled at Greenwood and began attending school there.
2. While at Tindley, Petitioner participated in varsity basketball as a freshman.
3. According to the Transfer Report completed by Petitioner's parents on October 3, 2011, Petitioner's transfer from Tindley to Greenwood was due to his mother losing her job and transporting Petitioner to Tindley was too financially burdensome for the family.
4. Tindley, the sending school, completed its portion of the Transfer Report on October 3, 2011. Tindley recommended that Petitioner receive limited eligibility status because his transfer was without a change of residence.
5. Petitioner provided on his Transfer Form that his mother lost her job, and since his mother was the main provider for Petitioner's family, a financial hardship was created requiring Petitioner to transfer to Greenwood.

¹ The Case Review Panel (CRP) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

² Seven members were present at the meeting, including Mr. Pat Mapes (chairperson), Ms. Cathy Klink, Mr. Matthew Rager, Mr. Earl Smith, Mr. Keith Pempek, Ms. Dana Cristee and Mr. Ed Baker. Ms. N. Renee Gallagher attended the meeting as counsel to the Panel.

6. Greenwood recommended on its Transfer Form that Petitioner receive full eligibility due to the presence of a financial hardship as a result of the Petitioner's mother losing her job.
7. On October 4, 2011, the Assistant Commissioner of the IHSAA determined that Petitioner's transfer fell under Rule 19-6.2, a transfer without a change of residence by Petitioner's parents, and therefore, Petitioner would have limited eligibility at Greenwood until March 1, 2012.
8. Petitioner timely filed his appeal with the Review Committee of the Commissioner's determination of limited eligibility. The Review Committee conducted its hearing on November 4, 2011, and issued its decision November 15, 2011 upholding the Commissioner's determination of limited eligibility for Petitioner until March 1, 2012 under Rule 19-6.2.
9. On November 17, 2011 Petitioner filed his appeal to the CRP.

CONCLUSIONS OF LAW

1. Although the IHSAA (Respondent) is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the Respondent analogous to a quasi-governmental entity. *IHSAA v. Carlsberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).
2. The CRP is established by the Respondent to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of the CRP. In the instant matter, the Respondent has rendered a final determination of student ineligibility for one year, until April 17, 2012 to the Petitioner. Petitioner has timely sought review by the CRP.
3. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent. The CRP is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination. I.C. 20-26-14-6(c)(3).
4. The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required. The Panel is required to hold a "meeting," I.C. 20-26-14-6(c)(2), not a hearing. The Panel is not required to collect testimony and information during the

meeting but may collect testimony and information prior to the meeting. *See* I.C. 20-26-14-6(c)(1). If the Panel upholds the IHSAA decision, a court of jurisdiction may consider the IHSAA decision, I.C. 20-26-14-7(c), as opposed to the Panel decision. The IHSAA Review Committee hearing process provides students with due process protection. *Carlsberg*, 694 N.E.2d at 241.

5. The Panel reviews the IHSAA determination for arbitrariness or capriciousness. *See Carlsberg*, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious “only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion.” *Id.* citing *Dep’t of Natural Resources v. Indiana Coal Council, Inc.*, 542 N.E.2d 1000, 1007 (Ind. 1989).

Additionally, the Panel reviews whether an IHSAA decision is:

not a fair and logical interpretation or application of the association’s rule; . . . contrary to a constitutional right, power, privilege, or immunity; . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . without observance of procedure required by law; or . . . unsupported by substantial evidence.

I.C. 20-26-14-7(c).

6. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
7. Under IHSAA Rule 19-6.2, any student who transfers from one school to a new school without a corresponding change of residence to a new district by the student’s parents will have limited eligibility at the new school from the date of enrollment until the first anniversary of the date on which the student last participated in interscholastic athletics at his previous school.
8. Under IHSAA Rule 17-8.1, the CRP “shall have the authority to set aside the effect of any Rule and grant a general waiver when the affected party establishes, by clear and convincing evidence, and to the reasonable satisfaction of the . . . CRP, that all of the following conditions are met: (a) Strict enforcement of the rule in the particular case will not serve to accomplish the primary purposes of the Rule; (b) The spirit of the Rule

will not be offended or compromised by a waiver; (c) Unless waived, an undue harm or burden will be suffered by the affected party from enforcement of the Rule; and (d) When a student eligibility waiver is requested, a hardship condition . . . exists.”

9. Under IHSA Rule 17-8.3, a student seeking a general waiver must show that a hardship condition exists. A “negative change” in the financial condition of the student or a student’s family may constitute a hardship condition, however, such change must be permanent, substantial and significantly beyond the control of the student or the student’s family.
10. Substantial evidence is in the record to support a finding under Rule 19-6.2: The transfer from Tindley to Greenwood was a transfer that was not accompanied by a change of residence by the Petitioner’s parents.
11. There is clear and convincing evidence in the record to support a finding that a general waiver under Rule 17-8.1 applies as a financial hardship, as allowed under Rule 17-8.3, exists in this particular case: Despite substantial evidence to support a finding under Rule 19-6.2, the record also contains clear and convincing evidence that strict enforcement of Rule 19-6.2 in this particular case would not serve to accomplish the primary purposes of Rule 19. The record contains clear and convincing evidence to support a finding that a general waiver is merited as a financial hardship exists. Such a finding would not offend or compromise the purpose of Rule 19.

A financial hardship exists due to the Petitioner’s mother’s loss of employment as Petitioner’s mother was the main provider to his family and her unemployment has resulted in causing a negative financial situation for the family. Since Petitioner’s mother suffers from significant health related problems making her unemployment likely permanent and at all times outside the control of the family. The mother’s need to send the Petitioner to a school where he has legal settlement, Greenwood, and is closer to his home would alleviate the burden of additional expenses for travel and uniforms. There is no evidence in the record to indicate that the transfer was for athletic reasons.

12. The IHSA decision to provide Petitioner with limited eligibility until March 1, 2012 was arbitrary and capricious and was not supported by the evidence as it failed to give weight to or consider the clear and convincing evidence of the existence of a financial hardship. Instead, the particular facts of this case support the application of the general

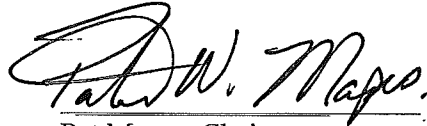
waiver under Rule 17-8.1 as the requirements of Rule 17-8.3 that a financial hardship exists are satisfied by clear and convincing evidence.

13. Therefore, the IHSAA Review Committee's determination that Petitioner receives limited eligibility due to his transfer from Tindley to Greenwood without a change of residence by his parents is hereby **nullified** as clear and convincing evidence exists to support application of the general waiver due to the existence of a financial hardship under Rule 17-8.1 and Rule 17-8.3. The Petitioner is granted **FULL ELIGIBILITY** immediately.

ORDER

The IHSAA Review Committee order is hereby **NULLIFIED** by a vote of 7-0. The Petitioner has **FULL ELIGIBILITY** to participate in athletics effective as of this Order.

DATE: December 19, 2011

A handwritten signature in black ink, appearing to read "Pat W. Mapes", is written over a horizontal line.

Pat Mapes, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the CRP has forty-five (45) days from the issuance of Panel's decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.